



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0229]

RIN 1625-AA00

Safety Zone; Lower Mississippi River, Port Gibson, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency temporary safety zone for all navigable waters of the Lower Mississippi River, extending the entire width of the river, from mile marker (MM) 405 to MM 408. This emergency safety zone is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with vessels transiting this area during high water. This rule prohibits persons and vessels from entering the safety zone area unless specifically authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 7 p.m. on March 31, 2018. For the purposes of enforcement, actual notice will be used from 10 a.m. on March 13, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0229 in the “SEARCH” box

and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Todd Manow, Sector Lower Mississippi River Prevention Department, U.S. Coast Guard; telephone 901-521-4813, email Todd.M.Manow@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Lower Mississippi River
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. Increasing high water in this area requires immediate action to protect persons, property and power plant infrastructure from the potential safety hazards associated with vessels transiting this area during high

water. This safety zone must be established immediately to protect people and vessels associated with and resulting from the high water and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This safety zone may include closures and/or navigation restrictions and requirements that are vital to maintaining safe navigation on the Lower Mississippi River during the high water. Therefore, delaying the effective date for this emergency safety zone to complete the NPRM process would also be contrary to the public interest as it would delay the safety measures vital to safe navigation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect personnel, vessels, and the marine environment from potential hazards created by the increasing high water.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Lower Mississippi River (COTP) has determined that there are potential hazards associated with increasing high water, including possible emergency operations to repair damage to power distribution infrastructure taking place on the left descending bank of the Lower Mississippi River between MM 405 and 408 in the vicinity of the Entergy Grand Gulf Nuclear Power Facility, in Port Gibson, MS. Loss of the power distribution lines system would be catastrophic to large areas of Louisiana and Mississippi. This rule is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with vessels transiting this safety zone

during high water.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River, extending the entire width of the river, from mile marker (MM) 405 to MM 408. Transit into and through this area is prohibited for all traffic beginning at 10 a.m. on March 13, 2018 and will continue through 7 p.m. on March 31, 2018. The COTP will terminate the enforcement of this safety zone before March 31, 2018 if the high water event ceases. Entry into this safety zone is prohibited unless specifically authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

Requests for entry will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 1-866-777-2784 or can be reached by VHF-FM channel 16. Persons and vessels permitted to transit this safety zone shall not meet, pass, or overtake any vessel currently transiting, shall maintain slowest speed for safe navigation, and shall comply with all lawful directions issued by the COTP or the designated representative.

This safety zone may include closures and/or navigation restrictions and requirements that are vital to maintaining safe navigation on the Lower Mississippi River during the high water. The COTP or a designated representative will inform the public through broadcast notices to mariners of any changes in the restrictions or the enforcement period for the safety zone.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. This emergency safety zone will restrict vessel traffic from entering or transiting through a three-mile section of the navigable waterways of the Lower Mississippi River from mile marker (MM) 405 to MM 408, in the vicinity of Port Gibson, MS, from 10 a.m. on March 13, 2018 through 7 p.m. on March 31, 2018. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management

Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone lasting approximately nineteen days that will prohibit entry into a three-mile stretch of the Lower Mississippi River during a hazardous high-water event. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination will be made available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 USC 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and

160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0229 to read as follows:

§ 165.T08-0229 Safety Zone; Lower Mississippi River; Port Gibson, MS.

(a) Location. The following area is a safety zone: All navigable waters of the Lower Mississippi River, extending the entire width of the river, from mile marker (MM) 405 to MM 408, in the vicinity of Port Gibson, MS.

(b) Period of enforcement. This section will be enforced from 10 a.m. on March 13, 2018 and will continue through 7 p.m. on March 31, 2018, or until the high-water event ceases, whichever occurs first.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 1-866-777-2784 or on VHF-FM channel 16.

(3) Persons and vessels permitted to enter this safety zone shall not meet, pass, or overtake any vessel currently transiting, shall maintain slowest speed for safe navigation, and shall comply with all lawful directions issued by the COTP or the designated representative.

(d) Informational Broadcasts. This safety zone may include closures and/or navigation restrictions and requirements that are vital to maintaining safe navigation on this section of the Lower Mississippi River during the high water. The COTP or a designated representative will inform the public through broadcast notices to mariners of any changes in the enforcement period for the safety zone.

Dated: March 12, 2018.

R. Tamez,
Captain, U. S. Coast Guard,
Captain of the Port Sector Lower Mississippi River.
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